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JOHN MARSHALL DAY IN THE LAW SCHOOL. — On Monday, February the fourth, the Law School took its part in the celebration general throughout the country to commemorate the one hundredth anniversary of the appointment of John Marshall to be Chief Justice of the United States. Lectures were suspended for the day, and in the afternoon Professor J. B. Thayer delivered an address in Sanders Theatre before the members of the Law School and a number of invited guests, in which the life and achievements of the great Chief Justice were ably reviewed.

THE MASSACHUSETTS TORRENS LAW BEFORE THE UNITED STATES SUPREME COURT. — On January 3, 1900, the Supreme Judicial Court of Massachusetts decided in favor of the constitutionality of the Land Registration Act of 1898 (c. 562). *Tyler v. The Judges of the Court of Registration*, 175 Mass. 71. See 13 HARVARD LAW REVIEW, 593. The case had come up on a petition for a writ of prohibition to prevent the Court of Registration from acting on an application for the registration of a parcel of land, the petitioner alleging that the claim encroached upon his own lot. He insisted that the whole act was unconstitutional, in that it might deprive some persons of their property without notice of the adverse claim, and so without due process of law, and that consequently the court established under it had no jurisdiction whatever. The Massachusetts court having supported the statute, the case was carried to the Supreme Court of the United States. That body, with four judges dissenting, has recently refused to take jurisdiction, holding that the plaintiff in error, having had notice himself, and being able therefore to contest the

claim before the Court of Registration, has as yet suffered no such injury, and has no such interest as will permit him to raise the question of the constitutionality of the act. *Tyler v. The Judges*, 21 Sup. Ct. Rep. 206.

It is a fundamental proposition that a court "will not listen to an objection made to the constitutionality of an act by one whose rights are not affected by it." Cooley, *Princ. Const. Law*, 3d ed. 166. But whether or not this principle can support the present decision is a very close question. It was argued that the plaintiff in error had a sufficient interest to raise the question of the constitutionality of the statute under the Fourteenth Amendment, in that he was in danger of losing his property by the decree of an unconstitutional court; but that, at any rate, the question whether this was so or not was not open to the Supreme Court, which must take jurisdiction under section 709 of the Revised Statutes. This section provides that a final judgment or decree in any suit in the highest court of a state, where the validity of a statute is drawn in question on the ground of repugnancy to the Constitution of the United States, and the decision is in favor of its validity, may be reëxamined in the Supreme Court upon a writ of error. The constitutionality of the Torrens Law having been the only ground of decision in the highest court of Massachusetts, this case would come within the literal words of the provision; but it seems more reasonable to say that this section must be read in the light of the general principle above stated, and that the validity of the law must be "drawn in question" by one having an interest affected by it. Nor can it be true that when a state court by choice or inadvertence passes over the jurisdictional question the United States Supreme Court is bound by its action. Moreover, although it may be admitted that if this act is unconstitutional as to some people it is void *in toto*, yet the decision of the court that the plaintiff in error had as yet no sufficient interest to raise the constitutional question seems likewise correct. It is true that where a statute imposes a tax or condemns land, or makes other provisions which, if carried out, will cause immediate injury, a person so threatened seems to have such an interest as will allow him to contest the constitutionality of the enactment by a petition for a writ of prohibition, nor need he wait until his property has actually been taken. *Weston v. Charleston*, 2 Peters, 449; *Conn. River R. R. v. County Commissioners*, 127 Mass. 50. But in these cases everything has been done up to the actual seizure of the property, while in the principal case the danger of losing it is far more remote, since a regular judicial investigation into the rival claims is to intervene. The Court of Registration may decide in the petitioner's favor, in which case it would be clear that he could not contest the constitutionality of the law. *California v. San Pablo and Tulare R. R. Co.*, 149 U. S. 308. If it decides against him, he can appeal to the Massachusetts courts, and if unsuccessful may then contest the validity of the statute before the United States Supreme Court.

In postponing a decision as to the constitutionality of the Massachusetts Torrens Law until the question is raised by one whose land has actually been registered in another's name, the Supreme Court seems, therefore, to have applied correctly a well-established and salutary principle.